

RIC GABBERT v. CHIRO PLUS CHIROPRACTIC CENTER, P.C., et al.

Maricopa County Superior Court Case No. CV2011-051861

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Exhibit 1

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Attorneys for Plaintiff

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MAR 01 2011



MOBILE & JAMES ALLEN
CLERK

SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY

RIC GABBERT, a married man,

Plaintiff,

v.

CHIRO PLUS CHIROPRACTIC
CENTER, P.C., an administratively
dissolved domestic corporation, FIRST
MEDICAL PLUS FAMILY PRACTICE,
INC, a domestic corporation, BODYAZ
AESTHETIC MEDSPA, LLC, a domestic
limited liability company, and DR.
MATTHEW B. HARTY, an unmarried
man,

Defendants.

Case No.:

CV2011-051861

COMPLAINT
(Jury Trial Requested)

Plaintiff Ric Gabbert, for his Complaint, alleges as follows:

1. Plaintiff Ric Gabbert ("Gabbert") is currently and at all times relevant to this action a resident of Maricopa County, Arizona. During the three year period prior to filing this Complaint ("the Claim Period"), Defendant Gabbert performed labor services for Defendants but was not compensated appropriately under the Fair Labor Standards Acts, 29 U.S.C. §§ 201-219 (hereinafter "FLSA").

1 2. Defendant Chiro Plus Chiropractic Center, P.C. ("Chiro Plus") is an
2 administratively dissolved domestic corporation located in Maricopa County.

3 3. Defendant First Medical Plus Family Practice, Inc ("First Medical") is a
4 corporation located in Maricopa County and registered to do business in the State of
5 Arizona.

6 4. Defendant BodyAZ Aesthetic MedSpa, LLC ("BodyAZ") is a domestic
7 limited liability company located in Maricopa County and registered to do business in the
8 State of Arizona.

9 5. Defendant Dr. Matthew B. Harty ("Harty") is a resident of Maricopa
10 County, Arizona. At all times relevant to this action Defendant Harty owned a majority
11 interest in Chiro Plus, First Medical and BodyAZ. Defendant Harty, as President/Chief
12 Executive Officer and Director of Chiro Plus, exercised significant economic control over
13 Chiro Plus, and was responsible for classifying Plaintiff as exempt or non-exempt under
14 the FLSA. Defendant Harty, as President/Chief Executive Officer, Secretary and
15 Director of First Medical, exercised significant economic control over First Medical, and
16 was responsible for classifying Plaintiff as exempt or non-exempt under the FLSA.
17 Defendant Harty, as Member-Manager of BodyAZ, exercised significant economic
18 control over BodyAZ, and was responsible for classifying Plaintiff as exempt or non-
19 exempt under the FLSA. Defendant Harty is therefore an "employer" subject to
20 individual liability under the FLSA.
21

22 6. The events giving rise to these causes of action occurred in Maricopa
23 County, Arizona. Defendants' primary place of business is within the jurisdiction of this
24
25

1 Court.

2 7. This Court has jurisdiction and venue over the subject matter and the
3 parties hereto pursuant to A.R.S. §§ 12-123 and 12-401.

4 **COUNT ONE**
5 **(Failure to Properly Pay Overtime Wages in Violation of the**
6 **Fair Labor Standards Act, 29 U.S.C. §§ 201-219 Against All Defendants)**

7 8. Plaintiff incorporates by reference the allegations above. In support of his
8 Complaint for unpaid overtime wages pursuant to the Fair Labor Standards Act, 29
9 U.S.C. §§ 201-219, he alleges as follows:

10 9. During the Claim Period, Plaintiff was employed by Defendants. At all
11 times relevant to this action, Plaintiff was a covered "employee" and Defendants were
12 Plaintiff's "employer" as those terms are defined by the FLSA.

13 10. At all times during the Claim Period, Defendant Chiro Plus was a covered
14 "Enterprise engaged in commerce or in the production of goods for commerce" as that
15 term is defined by the FLSA.

17 11. At all times during the Claim Period, Defendant First Medical was a
18 covered "Enterprise engaged in commerce or in the production of goods for commerce"
19 as that term is defined by the FLSA.

20 12. At all times during the Claim Period, Defendant BodyAZ was a covered
21 "Enterprise engaged in commerce or in the production of goods for commerce" as that
22 term is defined by the FLSA.

24 13. During the Claim Period, Plaintiff performed work for ChiroPlus, First
25 Medical and BodyAZ. These Defendants are involved in related activities through

1 unified operation or common control for a common business purpose. As such,
2 Defendants ChiroPlus, First Medical and BodyAZ are a single enterprise as that term is
3 defined by the FLSA.

4 14. Defendant Harty, in his positions with ChiroPlus, First Medical and
5 BodyAZ, exercised control over the nature and structure of the employment relationship
6 with Plaintiff

7
8 15. Plaintiff was required to regularly work in excess of 45 hours per week.
9 Plaintiff performed work in excess of 45 hours per week for ChiroPlus, First Medical and
10 BodyAZ or for any single entity or combination of the three entities. Plaintiff was
11 initially paid a base salary of \$36,000.00 for his services. On or about November 1,
12 2008, Defendants unilaterally changed Plaintiff's compensation from salary to hourly and
13 required Plaintiff to work a 45 hour workweek. At all times during Plaintiff's
14 employment, Defendants failed to compensate Plaintiff in full for time worked in excess
15 of 40 hours per week in violation of the FLSA.
16

17 16. ChiroPlus, First Medical and BodyAZ are joint employers of Plaintiff as
18 that term is defined under 29 C.F.R. § 791 as all three entities are not completely
19 disassociated with respect to the employment of Plaintiff and are under the common
20 control of Defendant Harty through his positions as President/CEO of ChiroPlus and First
21 Medical and Member-Manager of BodyAZ.
22

23 17. Defendants knew that they were subject to the requirements of the FLSA.

24 18. Defendants knew or showed reckless disregard that the duties performed by
25 Plaintiff were non-exempt duties under the FLSA and/or that the method by which

1 Plaintiff was compensated failed to qualify for any exemption under the FLSA.

2 19. Defendants nonetheless classified Plaintiff as "exempt" in an intentional
3 effort to avoid additional overtime compensation due him under the FLSA.

4 20. At all times during the Claim Period, Plaintiff was a nonexempt employee
5 under the FLSA.

6 21. During the Claim Period, Defendants failed to comply with Title 29 U.S.C.
7 §§ 201-219 in that Plaintiff often worked in excess of the agreed upon 45 hours per week,
8 but was not paid for those excess hours at the compensation rate required by the FLSA.
9

10 22. Defendants' failure to pay overtime compensation to Plaintiff was willful.
11 Defendants did not act in good faith in failing to pay overtime wages due.

12 23. Plaintiff has suffered economic damages as a result of Defendants'
13 unlawful compensation practice and is entitled to statutory remedies provided pursuant to
14 the FLSA, including but not limited to, unpaid overtime compensation, liquidated
15 damages, pre and post judgment interest, attorneys' fees and costs.
16

17 24. Defendants are liable, both individually and jointly, for violations of the
18 FLSA.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands trial of his claims by jury to the extent authorized by
21 law.
22

23 **REQUESTED RELIEF**

24 WHEREFORE, Plaintiff requests:

25 I. Count One

1 A. For the Court to declare and find that the Defendants committed one
2 or more of the following acts:

3 i. Violated overtime provisions of the FLSA, 29 U.S.C. § 207,
4 by failing to pay overtime wages to Plaintiff; and

5 ii. Willfully violated overtime provisions of the FLSA, 29
6 U.S.C. § 207;

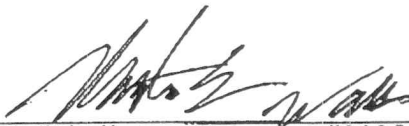
7 B. For the Court to award damages, including liquidated damages
8 pursuant to 29 U.S.C. § 216(b);

9 C. For the Court to award Plaintiff his reasonable attorneys' fees and
10 costs;

11 D. For the Court to award pre-judgment interest on all compensation
12 due, accruing from the date such amounts were due, and post-judgment interest; and
13

14 E. For the Court to award such other monetary, injunctive, equitable
15 and declaratory relief as the Court deems just and proper.
16

17
18 Dated this 1st day of March, 2011.
19

20
21 

22 Michelle R. Matheson #019568
23 Matthew E. Walls #026523
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Exhibit 2

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Attorneys for Plaintiff

SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY

RIC GABBERT, a married man,

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SUMMONS

~~Downloaded from the Lawyer Referral Service at~~

802-257-4034

or

www.lawyerfinders.org.

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Maricopa County Bar Association

THE STATE OF ARIZONA TO THE DEFENDANTS:

DR. MATTHEW B. HARTY, individually, and on behalf of CHIRO PLUS
CHIROPRACTIC CENTER, P.C.; FIRST MEDICAL PLUS FAMILY
PRACTICE, INC.; and BODYAZ AESTHETIC MEDSPA, LLC
4222 N. 12TH STREET #101-103
PHOENIX, ARIZONA 85014

YOU ARE HEREBY SUMMONED and required to appear and defend, within the
time applicable, in this action in this Court. If served within Arizona, you shall appear
and defend within 20 days after the service of the Summons and Complaint upon you,

exclusive of the day of service. If served out of the State of Arizona – whether by direct service, by registered or certified mail, or by publication – you shall appear and defend within 30 days after the service of the Summons and Complaint upon you is complete, exclusive of the day of service. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this state, the insurer shall not be required to appear, answer or plead until the expiration of 40 days after date of such service upon the Director. Served by registered or certified mail without the State of Arizona is complete 30 days after the date of filing the receipt and affidavit of service with the Court. Service by publication is complete 30 days after the date of first publication. Direct service is complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete 30 days after filing the Affidavit of Compliance and return receipt or Officer's Return. RCP 4; A.R.S. §§ 20-222, 28-502, 28-503.

YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend within the time applicable, judgment by default may be rendered against you for the relief demanded in the Complaint.

YOU ARE CAUTIONED that in order to appear and defend, you must file an Answer or proper response in writing with the Clerk of this Court, accompanied by the necessary filing fee, within the time required, and you are required to serve a copy of any Answer or response upon the Plaintiff's attorney. RCP 10(d); A.R.S. § 12-311; RCP 5.

REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO THE CASE BY PARTIES AT LEAST THREE (3) JUDICIAL DAYS IN ADVANCE OF A SCHEDULED COURT PROCEEDING. Maricopa County Local Rule 2.6, effective October 1, 1994.

The name and address of Plaintiffs' attorney is:

Michelle R. Matheson, Esq
Matheson & Matheson, P.L.C.
14358 N. Frank Lloyd Wright Blvd., Suite 11
Scottsdale, Arizona 85260
(480) 889-8951

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MAR 01 2011

GIVEN UNDER MY HAND this date: _____

MICHAEL JEANES, Clerk of the Superior Court

By _____
Deputy Clerk

Exhibit 3

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MAR 01 2011



**MICHAEL K. JAMES OLSON
& SEELEY
DEPUTY CLERK**

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**CERTIFICATE REGARDING
COMPULSORY ARBITRATION**

The undersigned certifies that they know the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this case is within the jurisdictional limit for compulsory arbitration and is not subject to compulsory arbitration, as provided by Rules 72 through 76 of the

1 Arizona Rules of Civil Procedure.

2 Dated this 5th day of March, 2011.

3
4 

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